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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/018,104	02/03/1998	JAMES L. HOBART	PHAN-00100	9278

28960 7590 06/24/2005

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EXAMINER	
SHAY, DAVID M	

ART UNIT	PAPER NUMBER
3739	

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/018,104	**Applicant(s)** HOBART ET AL.	
	Examiner david shay	**Art Unit** 3739	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED June 9, 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330

Continuation of 11. does NOT place the application in condition for allowance because: Applicant is apparently arguing, among other things, perceived limitations in the claims which are merely functional and do not do not serve to limit the claims, as they are not in proper form for means plus function recitations (see MPEP 2181). With regard to the issue of galvanometers, these are nowhere claimed in the claims to which Dwyer has been applied under section 102 of the statute, and as such this argument is immateial to the propriety of such rejections. The ability of lasers of the "same kind" e.g. using the same lasant ion and substrate crystal to produce different wavelengths is replete in the record as set forth in the previous office action (see Dwyer, for example). As already set forth in the previous office action, the mere claiming that some of the pulses in the output are of the same wavelength does not define over Dwyer, wherein for example, a procedure of cut, coagulate, cut, wherein each application is one pulse, would produce a series of pulses of a wavelength wherein the first and third pulses are of a wavelength, as already discussed in the previous office action, the requirement that the pulses of the same wavelength come from different lasers, while such limitation would define over Dwyer, is beyond the scope of the originally filed specification, as already set forth above. The forgoing is equally applicable to all the combination rejections wherein applicant is arguing that the term a wavelength distinguishes the claimed subject matter from the prior art. With regard to applicant's newly found concern regarding galvanometers, the examiner respectfully notes that the examiner took official notice of the notorious nature of the use of galvanometers in beam steering systems in the office action mailed September 17, 2001, In subsequent responses applicant discusses the use of a "galvanometer or other suitable device" and makes no attempt to challenge the examiner's taking of official notice (see applican't responses of (January 16, 2002; September 30, 2002; May 5, 2003) while further subsequent responses either do not discuss the galvanometer claims specifically, or simply rely on the patentability of the independent claims in asserting their patentability. As such, applicants assertion of the unobiousness of the use of galvanometers, while not a direct challenge to the examiner's original taking of official notice of over three years ago, more than five office actions past, will be treated as such. This challenge is not seasonable, as it was note raised within the response to the office action in which the official notice was first taken.